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T & TT Enterprise Sdn Bhd v Lembaga Pembangunan dan Lindungan Tanah

B HIGH COURT (KUCHING) — SUIT NO 22–51 OF 2002-III(I)
DAVID WONG J
29 OCTOBER 2007

C *Agency — Creation — Power of attorney — Development agreement to develop land between defendant and a company — Power of Attorney given to the company to develop land — Plaintiff engaged by company to do engineering works — Whether company attorney or agent of the defendant making defendant liable to pay plaintiff*

D

The plaintiff's claim was for damages and loss sustained by the plaintiff as a result of an alleged breach of the agreement entered into between the plaintiff E and Arena Jernih Sdn Bhd ('Arena Jernih') for the supply of engineering works. This claim is based on the contention that Arena Jernih entered into the agreement as the attorney or agent of the defendant, hence making the defendant primarily liable for the alleged damages and loss. The defendant however denied that Arena Jernih was its attorney or agent in the sense as F contended by the plaintiff. The defendant had entered into a development agreement dated 22 July 1994 to develop the land into an industrial, commercial and housing estate with Arena Jernih as the developer. Pursuant to cl 3 of the development agreement, the defendant gave a power of attorney dated 26 June 1996 ('PA') to Arena Jernih which on or about 14 September G 2000 engaged the plaintiff to do the certain engineering works on the land. However Arena Jernih on the 22 December 2000 suspended the engineering works on the land.

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Held, dismissing plaintiff's claims with costs to be taxed:

(1) In construing the PA and the development agreement together in the context in which they were executed the court was of the view that the PA was given to the Arena Jernih for the sole purpose of facilitating I Arena Jernih to carry out its obligations under the development agreement. There was no intention on the part of the defendant to make Arena Jernih as its agent in the sense as contended by the plaintiff. It was clear from the development agreement that the defendant had surrendered the land to the Arena Jernih for the purpose of developing

the land and in return for the 'surrender' the defendant was to be given certain numbers of buildings. It was also unreasonable in commercial terms that the defendant would provide the land for Arena Jernih to develop and also be responsible for debts incurred by Arena Jernih when Arena Jernih was deriving benefits from the arrangement. One could also see that the recital in the PA expressly referred to the development agreement (see the case of *Magnum Finance Bhd v Ling Sing Ping* [1988] 2 MLJ 403) (see para 10).

(2) The plaintiff had not seen the PA when they accepted Arena Jernih's invitation to supply engineering works on the land. They only took legal action against the defendant when they found out that Arena Jernih was in a bad financial state. The tender agreement was in the name of the Arena Jernih. No demand to pay the outstanding amount was ever made on the defendant by the plaintiff except for the letter from the plaintiff's lawyer. The cross examination question suggested that the plaintiff itself was not sure of the position of the defendant (see para 11).

[Bahasa Malaysia summary

Tuntutan plaintif adalah untuk gantirugi dan kehilangan yang dialami oleh plaintif disebabkan kononnya perlanggaran perjanjian di antara plaintif dan Arena Jernih Sdn Bhd ('Arena Jernih') untuk membekalkan kerja-kerja pembinaan. Tuntutan ini berdasarkan penegasan bahawa Arena Jernih telah memasuki satu perjanjian sebagai wakil atau ejen defendan, dengan itu menjadikan defendan bertanggungan terutamanya untuk gantirugi dan kehilangan yang dikatakan tersebut. Akan tetapi defendan menafikan bahawa Arena Jernih adalah wakil atau ejennya dalam maksud yang ditegaskan oleh plaintif. Defendan telah memasuki satu perjanjian pembangunan bertarikh 22 Julai 1994 untuk membangunkan tanah kepada tahap industri, komersial dan estet perumahan dengan Arena Jernih sebagai pemaju. Menurut kl 3 perjanjian pembangunan, defendan telah memberikan satu surat kuasa wakil bertarikh 26 Jun 1996 ('SKW') kepada Arena Jernih dimana pada atau lebih kurang 14 September 2000 telah menggunakan khidmat plaintif untuk kerja-kerja pembinaan di tanah tersebut. Akan tetapi Arena Jernih telah pada 22 Disember 2000 menggantungkan kerja-kerja pembinaan di tanah tersebut.

Diputuskan, menolak tuntutan plaintif dengan kos untuk ditaksirkan:

(1) Dalam mentafsirkan SKW dan perjanjian pembangunan tersebut dalam konteks yang ditandatangani mereka, mahkamah berpendapat bahawa SKW yang telah diberi kepada Arena Jernih adalah

semata-mata bagi tujuan membolehkan Arena Jernih menjalankan obligasinya di bawah perjanjian pembangunan tersebut. Defendan tidak mempunyai hasrat untuk menjadikan Arena Jernih sebagai ejennya dalam maksud yang ditegaskan oleh plaintif. Ia adalah jelas daripada perjanjian pembangunan bahawa defendan menyerahkan tanahnya kepada Arena Jernih untuk tujuan membangunkan tanah tersebut dan sebagai balasan untuk 'penyerahan' tersebut, defendan diberikan beberapa bangunan. Ia juga adalah tidak munasabah dalam erti komersial defendan memberikan tanahnya kepada Arena Jernih untuk membangunkan dan juga bertanggungjawab atas hutang-hutang yang dihutang oleh Areana Jernih apabila Arena Jernih mendapat keuntungan daripada perancangan tersebut. Seseorang dapat lihat daripada permulaan di SKW yang merujuk secara khusus kepada perjanjian pembangunan tersebut (lihat kes *Magnum Finance Bhd v Ling Sing Ping* [1988] 2 MLJ 403) (lihat perenggan 10).

(2) Plaintif tidak melihat SKW tersebut apabila mereka menerima tawaran Arena Jernih untuk membekalkan kerja-kerja pembinaan di tanah tersebut. Mereka hanya mengambil tindakan undang-undang terhadap defendan apabila mereka mendapati bahawa kewangan Arena Jernih dalam keadaan teruk. Perjanjian tender adalah di dalam nama Arena Jernih. Tiada tuntutan untuk membayar jumlah yang dihutang pernah dibuat kepada defendan melainkan surat daripada peguamcara plaintif. Soal balas menunjukkan bahawa plaintif sendiri tidak pasti akan kedudukan defendan (lihat perenggan 11).]

Notes

For cases on power of attorney, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 1000–1002.

Cases referred to

Glamour Green Sdn Bhd v Ambank Bhd & Ors & Another Appeal [2007] 3 CLJ 413 (refd)

Magnum Finance Bhd v Ling Sing Ping [1988] 2 MLJ 403 (refd)

Bong Ah Loi (Suhaili & Bong) for the plaintiff.
Kenny Yi (Yi & Co) for the defendant.

David Wong J:

[1] The plaintiff's claim is for damages and loss sustained by the plaintiff as a result of an alleged breach of the agreement entered into between the plaintiff and Arena Jernih Sdn Bhd ('Arena Jernih') for the supply of engineering works. This claim is based on the contention that Arena Jernih

entered into in the just mentioned agreement as the attorney or agent of the defendant, hence making the defendant primarily liable for the alleged damages and loss.

[2] The defendant however denied that Arena Jernih was its attorney or agent in the sense as contended by the plaintiff.

BACKGROUND FACTS

[3] The defendant at the material time was the registered owner of Lot 16 Block 1 Miri Concession Land District (the land). Arena Jernih and the defendant had entered into a development agreement dated 22 July 1994 ('Development Agreement') to develop the land into an industrial, commercial and housing estate with Arena Jernih as the developer. Arena Jernih and the defendant had also entered into a Variation Agreement on the 8 August 2000. Pursuant to cl 3 of the development agreement, the defendant gave a Power of Attorney dated 26 June 1996 ('PA') to Arena Jernih which on or about 14 September 2000 engaged the plaintiff to do the certain engineering works on the land. However Arena Jernih on the 22 December 2000 suspended the engineering works on the land.

[4] The land was charged to Public Bank Berhad by Arena Jernih pursuant to cl 14 of the PA and the same was auctioned off by Public Bank Berhad as a result of Arena Jernih's default in the repayment of the loan.

THE PLAINTIFF'S CONTENTION

[5] The crux of the submission of Mr Bong Ah Loi ('Mr Bong'), learned counsel for the plaintiff, is simply this. By virtue of the PA, Arena Jernih was the agent of the defendant when it entered into an agreement with the plaintiff for the supply of engineering works for the land and whatever damages and loss caused by the Arena Jernih's suspension of the works, the defendant as principal for Arena Jernih is liable to the plaintiff. Mr Bong relies on the concluding clauses of the PA for this submission of his. These concluding clauses read as follows:

> AND We hereby declare that all and every receipts deeds and matters and things which shall be by them /our Attorney have been given executed made or done for the purposes aforesaid shall be as good valid and effectual to all intents and purposes as if the same had been given executed made or done by us in our own proper name.
>
> AND We hereby undertake at all times to ratify whatsoever our Attorney shall lawfully do or cause to be done in or concerning the Project by virtue of this PA which shall be irrevocable and be binding upon the parties hereto their successors in title or assigns as therein provided.

A THE DEFENDANT'S CONTENTION

[6] Mr Kenny Yi, learned counsel for the defendant, contended that the PA did not make Arena Jernih an agent for the defendant when Arena Jernih engaged the plaintiff to supply engineering works on the land. To support his contention he submitted that the development agreement must be taken into consideration in interpreting the effects of the PA in the context of the relationship between the plaintiff and the defendant. To support his contention he relied on the case of *Magnum Finance Bhd v Ling Sing Ping* [1988] 2 MLJ 403 where Siti Norma Yaakob J (as then she was) said:

> Under the terms and conditions of the agreement executed the same day as the power of attorney, the defendant surrendered his property to the developer for the purpose of developing it into a housing estate and under cl 9 of the agreement, the defendant was entitled to 30% of every class of buildings to be constructed on his land, the costs for which would be borne by the developer with the remaining 70% going to the developer.
>
> It is also clear from cl 3 of the agreement that the power of attorney was executed for the sole purpose of facilitating the operations of the agreement and under cl 21 of the agreement, the power to charge the property is limited to the eloper's lots which can only be ascertained after subdivision.
>
> This is so but when interpreting the powers given in a power of attorney, Bowstead on *Agency* (13th Ed) at p 65 stresses that 'powers of attorney must be strictly construed, and are interpreted as giving only such authority as they confer expressly or by necessary implication'. The author goes further to lay down the following as being the most important rules when construing a power of attorney:
>
> (a) The operative part of a deed is controlled by the recitals where there is ambiguity;
>
> (b) Where authority is given to do particular acts, followed by general words, the general words are restricted to what is necessary for the proper performance of the particular acts;
>
> (c) General words do not confer general powers, but are limited to the purpose for which the authority is given, and are construed as enlarging the special powers only when necessary for that purpose;
>
> (d) The deed must be construed so as to include all incidental powers necessary for its effective execution.

I THE LAW

[7] In *Glamour Green Sdn Bhd v Ambank Bhd & Ors & Another Appeal* [2007] 3 CLJ 413 Gopal Sri Ram JCA said:

It is a settled guiding principle that where in a transaction more than one document or instrument is involved, courts usually construe those documents together. The point was made by Raja Azlan J in *Mohamed Isa & Ors v Abdul Karim & Ors* [1970] 2 MLJ 165 in a language that cannot be rivaled. This is what Raja Azlan J (as His Royal Highness then was) said:

> It is a settled rule of construction that where several documents forming part of one transaction are executed contemporaneously, all the documents must be read together as if they are one. This principle was followed in *Idris bin Haji Mohamed v Ng Ah Siew*, where Terrell J at p 261 said:
>
> > It is a well known rule of construction that where the arrangement between parties is contained in several documents all executed simultaneously, all the documents must be read together to ascertain the intention of the parties, and it is a corollary from this that the intention must be gathered from the documents as a whole. It has been held, for example, that when a bill of sale and a mortgage of a reversionary interest were executed simultaneously and related to the same debt, the bill of sale could be defeated by a condition contained only in the mortgage, *Edwards v Marcus* [1894] 1 QB 587 (see also the dissenting judgment of Fletcher Moulton LJ in *Manks v Whiteley*, which was approved on appeal to the *House of Lords, sub-nominee Whiteley v Delaney* [1914] AC 132).

In the present case, the two said permits to mine referred to the same subject matter and were substantially in identical terms except that the second permit was to take effect only a year later that is, after the first permit had expired. In the circumstances, the two permits to mine should be read together as forming one permit to mine for a period of two years.

This passage was recently applied by this court in *Mars Equity Sdn Bhd v Tis 'Ata' Ashar Sdn Bhd* [2006] 4 MLJ 302. So it follows that all the documents we have just mentioned must be read together. It is the combined effect of these documents that we are concerned with in order to ascertain the intention of the parties in this case. We are therefore of the view that there is merit in the plaintiff's complaint that the learned judge was wrong in the approach he took by Focusing solely upon the Purchase Undertaking … We begin by recognizing that there are no rules of construction. It is true that at one point in time courts did refer to the principles they applied when interpreting bilateral documents as being 'rules'. But the modern approach is different. It is set out in *Chitty on Contracts* (928th Ed) Vol 1 p 604, para 12–045:

> Certain rules of construction have been formulated by the courts. Previously, these rules were applied somewhat rigidly and adhered to tenaciously (even though the application of one rule in preference to another might lead to an opposite result). However, it was pointed out that the modern approach to construction is 'to assimilate the way in which (contractual) documents are interpreted by judges to the commonsense principles by which any serious utterance would be interpreted in ordinary life'. As a result, most rules of construction are nowadays better regarded merely as guidelines or assumptions

> as to what the court may regard as the normal use of language and which assist judges to arrive at a reasonable interpretation of the parties' intentions, though subject to examination of the relevant circumstances surrounding the transaction. Some rules, on the other hand, such as the *contra proferentem* rule, are of a different nature in that they are less obviously designed to ascertain the intentions of the parties and are more closely assimilated to 'rules' in the traditional sense.'

That it is the objective aim and purpose of the transaction which is critical was recognized by Lord Diplock in *Antaios Compania Noviera SA v Salen Rederierna AB* [1985] 1 AC 191, where he said, p 201, para D1:

> While deprecating the extension of the use of the expression 'purposive construction' from the interpretation of the statutes to the interpretation of the private contracts, I agree with the passage I have cited from the arbitrators' award and I take this opportunity of re-stating that if detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business commonsense, it must be made to yield to business commonsense.

In *G Percy Trentham Ltd v Archital Luxfer Ltd* [1993] 1 Lloyd's Rep 25, Steyn LJ (as he then was) said this, p 27:

> … in practice our law generally ignores the subjective expectations and the unexpressed mental reservations of the parties. Instead the governing criterion is the reasonable expectations of honest men.

And in the present case that means that the yardstick is the reasonable expectations of sensible businessman. We accept that the foregoing comment was made in the context of contract formation. But in our judgment the principle applies with equal force to contract interpretation.

[8] Before I apply the above principles, it would be appropriate that I set out the relevant paragraphs of the PA and the development agreement.

POWER OF ATTORNEY

[9] One of the recital parts of the Power of Attorney reads as follows:

> NOW THIS DEED WITNESSETH that *pursuant to a development agreement entered between the Appointor and Appointee hereof on 22 July 1994 ('the development agreement')*, we do hereby appoint ARENA JERNIH SDN BHD (NON-NATIVE) a company incorporated under the Companies Act, 1965 and having its registered address at Lot 559 3rd Floor, Jalan Permaisuri, 98000 Miri, Sarawak ('the Appointee') to be our lawful Attorney from the date hereof either jointly and severally to do all or any of the following acts, matters, deeds and things (Emphasis added.)

DEVELOPMENT AGREEMENT

DEVELOPMENT AGREEMENT

Agreement No: PELITA/U/18/94

THIS AGREEMENT is made this 22 July 1994 BETWEEN THE LAND CUSTODY AND DEVELOPMENT AUTHORITY, a body corporate established under the Land Custody and Development Authority Ordinance, 1981 and having its office at 10th Floor, Wisma Bapa Malaysia, Petra Jaya, 93502 Kuching, (hereinafter called 'PELITA') of the one part AND ARENA JERNIH SDN. BHD., a company incorporated and registered under the Companies Act, 1965 in Sarawak and having its registered office at Lot 559 3rd, Jalan Permaisuri, 98000 Miri, Sarawak (hereinafter called 'the Developer') of the other part.

WHEREAS PELITA has applied for the alienation of the state land situate at Jalan Lutong/Kuala Baram, Bahagian Miri comprising an area of 18.45 ha, more or less, and described as Lots 15 and 16 Block 1 Miri Concession Land District, and unsurveyed Lot situate at Piasau Road, Lutong adjacent to SMK Lutong, and the site for the proposed Tudan Resettlement Scheme Phase 5 Miri, as more particularly delineated and edged red on the locality plan annexed hereto and marked 'A' (hereinafter referred to as 'the said land').

AND WHEREAS PELITA is desirous of developing the said land and in particular the construction and completion thereon subject to the approval of the relevant authorities of one (1) block 8-storey commercial office complex on Lot 15 Block 1 MCLD; a light industrial estate comprising forty (40) units of detached lots, sixty five (65) units of semi-detached lots and thirty nine (39) units of terraced lots on Lot 16 Block 1 MCLD and sixty (60) units of condominium, seventy six (76) units of 2-storey semi detached houses and thirty seven (37) units of 2-storey detached houses on the unsurveyed Lot situate at Piasau Road, Lutong adjacent to SMK Lutong including the associated infrastructure in accordance with plans drawings and specifications to be approved by the relevant authorities (hereinafter referred to as 'the said Project') and the infrastructure of the Proposed Tudan Resettlement Scheme Phase 5 (hereinafter referred to as 'the said Scheme').

AND WHEREAS PELITA and the Developer are now both desirous of entering into this agreement for and on the development of the said land on cash payment basis or partly in kind or barter trade basis with the return of floor space in the commercial office complex, percentage of developed lots of the light industrial estate, percentage of completed condominium and housing units (detached/semi detached houses) and the developed infrastructure of the proposed Tudan Resettlement Scheme Phase 5 and further subject to the terms and conditions as hereinafter contained.

NOW THIS AGREEMENT WITNESSETH as follows:

1. ENGAGEMENT OF DEVELOPER

PELITA hereby agrees to appoint and engaged the Developer to deal and develop the said land for the purpose of constructing and erecting thereon of one (1) block 8-storey commercial office complex on Lot 15 Block 1 MCLD; a light

industrial estate comprising forty (40) units of detached lots, sixty five (65) units of semi-detached lots and thirty nine (39) units of terraced lots on Lot 16 MCLD, sixty (60) units of condominium, seventy six (76) units of 2-storey semi detached houses and thirty seven (37) units of 2-storey detached houses on the unsurveyed Lot situate at Piasau Road, Lutong adjacent to SMK Lutong and the Proposed Tudan Resettlement Scheme Phase 5 including the associated infrastructure and the Developer hereby agrees to undertake the commencement and completion of the said Project/Scheme at their own costs and expenses.

2. CONSIDERATION

The consideration for 1 above shall be the following:

2.1 An area of 1,395 sq. metres in the Ground Floor of the 8-storey commercial office complex on Lot 15 Block 1 MCLD;

2.2 Fifteen percent (15%) of the developed lots of the light industrial estate comprising forty (40) units of detached lots, sixty five (65) units of semi-detached lots and thirty nine (39) units of terraced lots of Lot 16 MCLD.

2.3 Fifteen percent (15%) of the sixty (60) units of condominium, seventy six (76) units of 2-storey semi detached houses and thirty seven (37) units of 2-storey detached houses on the unsurveyed Lot situate at Piasau Road, Lutong adjacent to SMK Lutong.

2.4 The Developer shall construct and complete at the Developer's own costs and expense Tudan Resettlement Scheme Phase 5.

2.5 The Developer shall resite the sixty (60) squatter families from Lot 16 Block 1 MCLD to the said Scheme.

12. TRANSFER OF THE SAID PROJECT/SCHEME

12.1 In consideration of the Developer performing its obligations set out herein, the Developer hereby agrees, undertakes and covenants to transfer or caused to be transferred at no cost to PELITA and/or its nominee(s) the following:

12.1.1 An area of 1,395 sq. metres in the Ground Floor of the 8-storey commercial office complex on Lot 15 Block 1 MCLD.

12.1.2 Fifteen percent (15%) of the developed lots of the light industrial estate comprising forty (40) units of detached lots, sixty five (65) units of semi-detached lots and thirty nine (39) units of terraced lots on Lot 16 Block 1 MCLD.

12.1.3 Fifteen percent (15%) of the sixty (50) units of condominium, seventy six (76) units of 2-storey semi detached houses and thirty seven (37) units of 2-storey detached houses on the unsurveyed Lot situate at Piasau Road, Lutong adjacent to SMK Lutong.

12.1.4 The whole of the completed Proposed Tudan Resettlement Scheme Phase 5

12.2 All such transfers shall be free from encumbrances and with vacant possession.

12.3 The respective party shall be solely responsible for all fees charges or stamp duties assessed on their respective shares of completed Project/Scheme or other buildings. And further the respective party shall be responsible for all legal expenses and cost inclusive of stamp duties, legal fees relating to any dealing affecting their respective shares of completed Project/Scheme.

12.4 The Developer shall effect the transfer within sixty (60) days after the issue of the Certificate of Completion by the Developer's Consultant for the said Project or the issue of the individual land titles for the said Project whichever is later.

12.5 The Developer shall hand over the completed scheme with a period of ten (10) months from the date of execution of the development agreement.

16. RESPONSIBILITY FOR COSTS AND EXPENSES

The Developer shall be responsible for all works necessary in connection with the said Project/Scheme and shall bear all costs and expenses incurred for the implementation of the said Project/Scheme and matters incidental thereto and without prejudice to the foregoing shall include:

16.1 To apply for and obtain approval from Lands and Survey Department for the sub-division pegging survey amalgamation and variation of title condition of the said Land, if any, and to pay for all fees, premium and charges payable to Lands and Survey Department in respect thereof;

16.2 The preparation and submission and/or resubmission of plans and drawings to the relevant authorities and to obtain approval thereto;

16.3 The carrying out of further earth-filling and leveling works as may be required;

16.4 The construction and completion of all infrastructural works amenities and development including roads, driveways, car parks, drains, culverts, sewage system and retaining walls in accordance with the requirements and standard of the relevant authorities and in accordance with the road and engineering plans to be approved by the relevant authorities;

16.5 The construction and completion of the said Project/Scheme and other buildings as may be approved by the relevant authorities in

A accordance with the building plans, structural drawings and specifications to be approved by the relevant authorities;

16.6 The installation of water and electricity mains for the supply of water and electricity to all the buildings and to pay for capital contribution/costs and development charges payable to the
B appropriate Authorities as may be applicable for such installations and to provide all internal plumbing and sanitation system, and internal wiring to the buildings and for the installation of all internal wiring to the buildings and for the installation of all necessary electricity supply overhead and/or service lines and water main extension from
C the respective water and electricity mains of the appropriate Authorities to the said Project/Scheme. For the said Scheme and Developer shall provide water reticulation and capital contribution.

16.7 The appointment of Consultants, Surveyors, Engineers, Architects, Quantity Surveyors and Solicitors as may be necessary and to pay for
D all fees and professional charges in connection therewith;

16.8 Obtaining insurance policies and payment of all premium of such policies required to be obtained under this Agreement;

16.9 Any other works and payments incidental to the said Project/Scheme.

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[10] From the above paragraphs of the PA and the development agreement and construing the two documents together in the context in which they were executed as required of me by law, I am of the view that the PA was given to the Arena Jernih for the sole purpose of facilitating Arena Jernih to carry out
F its obligations under the development agreement. There was no intention on the part of the defendant to make Arena Jernih as its agent in the sense as contended by the plaintiff. It is clear from the development agreement that the defendant had surrendered (to borrow the words of Siti Norma Yaakob J as she then was in *Magnum Finance Bhd v Ling Sing Ping*) the land to the
G Arena Jernih for the purpose of developing the land and in return for the 'surrender' the defendant was to given certain numbers of buildings set out in cl 12 of the development agreement. It is also unreasonable in commercial terms that the defendant would provide the land for Arena Jernih to develop and also be responsible for debts incurred by Arena Jernih when Arena Jernih
H was deriving benefits from the arrangement. One can also see that the recital in the PA expressly referred to the development agreement. In my view this case is similar to the case of *Magnum Finance Bhd v Ling Sing Ping* in that the agreement entered between Arena Jernih and the defendant was purely on a 'barter basis' as testified by DW1.

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[11] My interpretation is in fact corroborated by the following conducts of the plaintiff:

1. They had not seen the PA when they accepted Arena Jernih's invitation to supply engineering works on the land.

2. They only took legal action against the defendant when they found out that Arena Jernih was in a bad financial state.

3. The tender agreement was in the name of the Arena Jernih.

4. No demand to pay the outstanding amount was ever made on the defendant by the plaintiff except for the letter from Messrs Bong & Co Advocates.

5. Mr Bong's cross examination question suggests that the plaintiff itself was not sure of the position of the defendant. I say that for the reason that an agency relationship between the Arena Jernih and the defendant (as contended by the plaintiff) is completely different to a joint venture relationship as suggested by Mr Bong in this question to DW1:

Q: I suggest to you that, in view of the management and supervision by the defendant, this project was undertaken by the defendant with Arena Jernih on a joint venture basis and not on a barter basis. Do you agree?

A: It was not meant to be a joint venture basis.

[12] Accordingly I dismiss the plaintiff's claims as stated in the statement of claim with costs to be taxed unless agreed to the defendant.

Plaintiff's claims dismissed with costs to be taxed.

Reported by Sally Kee